

DECONTROLLED/UNCLASSIFIED

E143

Page: 1

Current Class: UNCLASSIFIED
Current Handling: n/a
Document Number: 2000LIMA05683

Channel: n/a

UNCLASSIFIED

PTQ9939

PAGE 01 LIMA 05683 230142Z
ACTION WHA-00

INFO	LOG-00	AID-00	CIAE-00	DODE-00	SRPP-00	EB-00	UTED-00
	VC-00	H-01	TEDE-00	INR-00	IO-00	L-00	AC-01
	NSAE-00	NSCE-00	OIC-02	OMB-01	PA-00	PM-00	PRS-00
	ACE-00	P-00	SP-00	SS-00	STR-00	TRSE-00	T-00
	USIE-00	PMB-00	PRM-01	DRL-02	G-00	SAS-00	/008W

-----88E68E 230143Z /15

P 230002Z SEP 00
FM AMEMBASSY LIMA
TO SECSTATE WASHDC PRIORITY 6512
INFO AMEMBASSY CARACAS
AMEMBASSY MONTEVIDEO
AMEMBASSY OTTAWA
AMEMBASSY MEXICO
AMEMBASSY QUITO
AMEMBASSY SANTIAGO
AMEMBASSY ASUNCION
AMEMBASSY BUENOS AIRES
AMEMBASSY BRASILIA
AMEMBASSY BOGOTA
AMEMBASSY LA PAZ
AMEMBASSY MADRID
USCINCSO MIAMI FL

RELEASED IN PART
B6

UNCLAS LIMA 005683

E.O. 12958: DECL N/A
TAGS: PGOV, PREL, PHUM, PE
UNCLASSIFIED

PAGE 02 LIMA 05683 230142Z
SUBJECT: IS PAYING SOMEONE TO CHANGE THEIR POLITICAL ALLEGIANCE
A CRIME?

1. (U) IN THE WAKE OF THE SENSATIONAL VIDEO FOOTAGE WHICH SHOWED FORMER INTELLIGENCE CHIEF VLADIMIRO MONTESINOS PAYING \$15,000 TO OPPOSITION LEGISLATOR-ELECT ALBERTO KOURI TO JOIN THE GOP'S RULING COALITION, QUESTIONS AROSE WHETHER THE VIDEO DOCUMENTED A CRIME. ATTORNEYS CLOSE TO THE GOP SUGGEST THAT WHILE MONTESINOS' ACTIONS MAY HAVE BEEN REPREHENSIBLE, THEY DO NOT NECESSARILY CONSTITUTE CRIMINAL BEHAVIOR. THEY ARGUE:

--THAT THE LEGISLATOR-ELECT HAD YET TO ASSUME OFFICE AND WAS, THEREFORE, NOT A PUBLIC OFFICIAL;
--THAT THE FOOTAGE DOES NOT SHED LIGHT ON THE SOURCE OF THE

Current Class: UNCLASSIFIED

Page: 1

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: DONALD A. JOHNSTON
DATE/CASE ID: 28 SEP 2001 200004441

DECONTROLLED/UNCLASSIFIED

DECONTROLLED/UNCLASSIFIED

Page: 2

Current Class: UNCLASSIFIED
Current Handling: n/a
Document Number: 2000LIMA05683

Channel: n/a

FUNDS PAID AND COULD HAVE BEEN MONTESINOS' PERSONAL FUNDS;
--THAT NO ILLICIT ACTIVITIES OR SERVICES WERE CONTRACTED SINCE
SWITCHING PARTY ALLIANCES IS NOT A CRIME; AND,
--THAT THE VIDEO WAS PROCURED THROUGH EXTRA-LEGAL MEANS AND
WOULD THEREFORE BE INADMISSIBLE AS EVIDENCE IN A COURT OF LAW.

2. (U) WE HAVE CONTACTED SEVERAL CRIMINAL ATTORNEYS AND A
PROMINENT JUDGE TO TRY TO GET A DEFINITIVE ANSWER TO THIS
QUESTION. ANSWERS WERE COLORED BY THE POLITICS OF THE
RESPONDENTS, BUT THE CONSENSUS IS THAT THERE IS "PROBABLY"
ENOUGH EVIDENCE WITHIN THE VIDEO TO JUSTIFY CRIMINAL CHARGES AND
TO TAKE THE CASE TO TRIAL. WHETHER OR NOT THE CASE COULD BE WON
IS ANOTHER ISSUE.

3. (SBU) RESPECTED CRIMINAL ATTORNEY [REDACTED] TOLD POLOFF THAT
IF HE WERE PROSECUTING THE CASE, HE WOULD MAKE THE FOLLOWING
ARGUMENTS:

B6

UNCLASSIFIED

PAGE 03 LIMA 05683 230142Z

PREMISE: THE VIDEO IS ADMISSIBLE AS EVIDENCE. FIRST THE VIDEO
WAS MADE IN THE OFFICE OF A PUBLIC OFFICIAL WITH STATE-OWNED
EQUIPMENT. SECOND, NO ONE'S RIGHT TO PRIVACY WAS VIOLATED SINCE
THE TAPE, INCLUDING THE FILMING OF THE EXCHANGE OF MONEY, WAS
INTENDED BY ONE OF THE PARTIES. FOR THE ABOVE TWO REASONS,
THERE ARE NO GROUNDS TO BAR ADMISSION OF THE TAPE AS EVIDENCE.

PREMISE: KOURI WAS PAID MONEY TO INFLUENCE HIS ACTIONS AS A
LEGISLATOR. CITING THE DOCTRINE OF "PRIOR ACCORD," [REDACTED] ARGUED
THAT THE LAW CLEARLY CONSIDERS AS "PUBLIC OFFICIALS" THOSE WHO
ENGAGE IN A CORRUPT ACT ENGENDERED BY FACT THAT THEY WILL
SHORTLY ASSUME PUBLIC OFFICE. THE UNDERSTOOD PURPOSE OF THIS
DOCTRINE, [REDACTED] IS TO ENSURE THAT THOSE WHO ARE TO ASSUME A
PUBLIC POSITION DO NOT DISHONESTLY BENEFIT FROM AN AUTHORITY
THAT WILL BE EXERCISED IN THE FUTURE. THE VIDEO SHOWS
MONTESINOS AND KOURI APPEARING TO AGREE ON FUTURE ACTIVITIES OF
KOURI ONCE HE ASSUMES OFFICE.

B6

B6

PREMISE: KOURI VIOLATED HIS "DUTIES" AS A PUBLIC OFFICIAL.
ARTICLE 393 OF THE PENAL CODE PROHIBITS PUBLIC OFFICIALS FROM
SOLICITING OR ACCEPTING DONATIONS, PROMISES OR ANY OTHER TYPE OF
BENEFIT, WHICH ADVOCATE AN ACT OR AN OMISSION THAT WOULD NOT BE
CONSISTENT WITH THEIR OBLIGATIONS. BY ACCEPTING MONEY TO SWITCH
POLITICAL ALLEGIANCE AND, MOREOVER, TO SUBSUME HIS VOTE AND
POWERS AS A LEGISLATOR TO MONTESINOS, KOURI VIOLATED HIS DUTY TO
THE CONSTITUENTS WHO ELECTED HIM.

PREMISE: MONTESINOS ATTEMPTED TO "CORRUPT" A PUBLIC OFFICIAL.

Current Class: UNCLASSIFIED

Page: 2

DECONTROLLED/UNCLASSIFIED

DECONTROLLED/UNCLASSIFIED

Current Class: UNCLASSIFIED
Current Handling: n/a
Document Number: 2000LIMA05683

Page: 3

Channel: n/a

ARTICLE 399 PLAINLY STATES THAT ATTEMPTING TO CORRUPT (DEFINED
AS BRIBERY OR SUBORNATION) A PUBLIC OFFICIAL IS A CRIME. HENCE,
UNCLASSIFIED

PAGE 04 LIMA 05683 230142Z
MONTESINOS' CRIME WAS COMMITTED BY OFFERING MONEY TO KOURI WITH
THE AIM OF INFLUENCING HIS BEHAVIOR AS A LEGISLATOR. IN THIS
VEIN, THE SOURCE OF THE MONEY IS IMMATERIAL.

HAMILTON

UNCLASSIFIED

<< END OF DOCUMENT >>

Current Class: UNCLASSIFIED

Page: 3

DECONTROLLED/UNCLASSIFIED